



STATE SENATOR

RICH ZIPPERER

Testimony of Senator Rich Zipperer in Support of Senate Bill 451

This legislation was introduced in order to bring fairness to the use of default judgments in civil cases in our state.

Under current law, once a defendant in a civil suit is served with a complaint, he or she must file an answer, in most cases, within 45 days. If the defendant fails to answer within these timelines, it can lead to a default judgment in favor of the plaintiff. If a default judgment is entered, the defendant loses the case and is therefore liable for the damages.

Under current law, the default judgment only works against defendants. Senate Bill 451 evens the playing field by allowing the defendant(s) in a civil lawsuit to file a default judgment motion if the plaintiff fails to respond to the defendant's counterclaim within the proper timelines. The bill also applies to cross-claims, which are claims filed by parties that are on the same side of the case.

Thank you for your time today. I would be happy to answer any questions that the committee members may have.



Wisconsin Defense Counsel

Defending Individuals And Businesses In Civil Litigation

Memorandum

To: Members, Senate Committee on Judiciary, Utilities, Commerce, and Government Operations

From: Catherine Rottier and Andrew Cook, on behalf of Wisconsin Defense Counsel

Date: February 22, 2012

Re: **Support for Senate Bill 451, Allowing Defendants in Civil Lawsuits to File Default Judgments against Plaintiffs and Cross Defendants**

On behalf of the Wisconsin Defense Counsel, we submit this memorandum in support of Senate Bill 451. WDC is a statewide organization of attorneys dedicated to the defense of Wisconsin citizens and businesses, the maintenance of an equitable civil justice system, and the education of its members.

Current Law Pertaining to Default Judgments

Under current law, once a defendant in a civil lawsuit is served with a complaint he or she must file an answer within 45 days (although, in some circumstances the deadline is 20 days). If the defendant fails to answer within these timelines, it can lead to a default judgment in favor of the plaintiff. If a default judgment is entered, the defendant loses the case and is therefore liable for the damages.

Under current law, the default judgment only works against defendants. In *Pollack v. Calimag*, 157 Wis. 2d 222, 458 N.W. 2d 591 (Ct. App. 1990), the defendant filed a counterclaim and the plaintiff did not respond for three months. The defendant moved for a default judgment against the plaintiff on the counterclaim, but the trial court denied the motion and the Court of Appeals upheld the lower court's decision. In reaching its decision the Court of Appeals noted that there is no provision in Wisconsin's law allowing the court to enter a default judgment against the plaintiff for failing to timely answer the counterclaim. *Pollack*, 157 Wis. 2d at 235.

Senate Bill 451 Treats Both Plaintiffs and Defendants Equally

Senate Bill 451 evens the playing field by allowing a defendant in a civil lawsuit to file a default judgment motion if the plaintiff fails to respond to the defendant's counterclaim within the proper timelines. The bill also applies to cross-claims (claims filed by parties that are the same side of the case).

Wisconsin's current law allowing only plaintiffs in a civil lawsuit to have the benefit of a default judgment is both illogical and unfair. SB 451 evens the scales of justice, granting both plaintiffs and defendants the ability to seek a default judgment.

Conclusion

WDC therefore supports SB 451 and respectfully requests that you vote for it out of committee.